IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 5170 of 2005

Between:

Association of Managements of Private Colleges of Education, Andhra Pradesh, Regd. No. 654/2004,
Rep. by its Secretary, Maruthi Nagar, Kurnool.

..... PETITIONER

AND

1 The State of Andhra Pradesh, Rep. by the Principal Secretary to Government, School Education Department, Secretariat Buildings, Hyderabad.
2 The Ed-Cet Convener 2003-2004/Dean, College of Education, Osmania University, Hyderabad.
3 The Ed-Cet Convener 2004-2005/Regional Joint Director School Education, Kakinada.
4 The A.P. State Council for Higher Education, Rep. by its Secretary, Saifabad, Hyderabad.
5 The Commissioner and Director of School Education, Saifabad, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to G.O.Ms.No. 46, School Education (Trg) Department dated 23-2-2005 issued by the 1st respondent and quashj para 4 of the said G.O. in directing the 3rd respondent Ed-cet convener 2004-2005 to reduce the proportionate number of seats from the management quota at the time of allotment of candidates to Private Colleges of Education to the extent of excess seats availed by them during 2003-2004 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.A.VEERASWAMY

Counsel for the Respondent Nos.1 to 5: Mr. Deepak Bhattacharjee

and G.P. for Education

The Court made the following :

THE HONOURABLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION No.5170 of 2005

ORDER:

Petitioner, an Association of Managements of Private Colleges of Education, being aggrieved by para-4 of G.O.Ms.No.46, School Education (Trg) Department, dated 23.2.2005 issued by the Principal Secretary to Government, School Education Department, directing the third respondent (Ed-CET Convener 2004 –2005) to reduce the proportionate number of seats from the management quota at the time of allotment of candidates to Private Colleges of Education, to the extent of excess seats availed by them during the academic year 2003-2004, filed this petition for quashing the
para-4 of the aforesaid G.O., herein after referred to as the G.O.

2. A.P. State Council of Higher Education (4th respondent) in discharge of its duties, *inter alia*, holds Ed-CET examination every year for admission of students into various colleges of education, run by the government and private managements, as per the merit, subject to the rules of reservation and ad-hoc rules framed by the Government under Section 3 of A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short 'the Act'). As per the ad-hoc rules framed for the Academic year 2003-2004 vide G.O.Rt.No.168, Education
(SE.Trg-1) Department, dated 5.2.2004 (the Rules), which govern admissions to B.Ed. course in various unaided colleges, the Convenor has to allot students from the Common Merit List prepared, as per the marks obtained in Ed-CET, upto 85% of

the sanctioned strength of the various educational colleges, and the remaining 15% seats can be filled in by the respective managements from out of the candidates eligible and qualified in the Ed-CET examination (vide Rule 4(ii) of the Rules). While Rule 5 of the Rules prescribed the eligibility criteria for admission, rule 6 thereof prescribed the method of admissions, as per which 35%, 15%, 30% and 20% of the seats in the colleges are to be allotted to the students who opt for Mathematics, Physical Science, Biological Science and Social Studies subjects, respectively. Since many of the unaided colleges did not adhere to the above methodology, and allotted more than 20% seats (as per rule 6 of the Rules) to social studies students and some other subjects, respondents say that they, with a view to curb such practice in future, in the unaided non-minority colleges of education, issued the G.O., para-4 of which is questioned in this petition.

3. The case of the petitioner, in brief, is that due to heavy demand for the subject Social Studies during the year 2003-2004, most of, if not all, the private non-aided colleges of education, (including unaided minority educational colleges) deviated from the methodology mentioned in rule 6 of the Rules, for various reasons, and since the Convenor of Ed-CET himself did not adhere to the said Rule and the methodology and allotted more students than that are prescribed by Rule 6 of the Rules, (the details of which are mentioned in the affidavit filed in support of the petition) and since none of the unaided non-minority educational colleges exceeded the 15% quota allotted to them, para-4 of the G.O. singling out the non-minority unaided educational colleges, offends Article 14 of the Constitution.

4. On behalf of respondents Principal Secretary, School Education Department, filed his counter affidavit contesting the petition.

5. The main contention of Sri Prakash Reddy, learned senior counsel for the petitioner is that since the government, taking into consideration the need to increase seats in Social Studies subject, revised and allotted more seats in the subject of Social Studies, and though all the non-aided educational colleges did not adhere to the methodology prescribed by rule 6 of the Rules, Government without taking any action against the unaided minority institutions, depriving the unaided

non-minority educational colleges only, but not the unaided minority educational colleges (which are similarly situate like the unaided non-minority educational colleges) is but discriminatory and virtually amounts to taking away the benefit given by the right hand through the left hand, para-4 of the G.O. is liable to be quashed.

6 . The contention of the learned Government Pleader is that since list of the colleges, which are the members of the petitioner association, is not furnished with the petition, the petition is liable to be dismissed in limine. It is his contention that since Government is contemplating to take action against the unaided minority educational colleges also, if they deviated from the methodology, and since petitioner cannot direct the Government to fix its timetable as to when it should take action against whom, petitioner cannot be heard to say that para-4 of the G.O. suffers from the vice of discrimination, more so because, decision taken by the first respondent for issuing the G.O. is a policy decision, which cannot subject to judicial review as held in **MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER EDUCATION v PARITOSH BHUPESH KUMARSHETH** and **ASIF HAMEED v STATE OF JAMMU & KASHMIR**. It is his contention that since a Writ of Certiorari lies against decisions of Tribunals and authorities exercising judicial or quasi-judicial functions, which are subordinate to the High Court, and since Government while issuing the G.O. is not performing any judicial or quasi-judicial power, petition for issuance of Writ of Certiorari is not maintainable. Placing strong reliance on **STATE OF BIHAR v KAMESHWAR PRASAD SINGH** he contended that the fact that Government gave a temporary benefit to unaided minority educational colleges would not clothe the petitioner to claim the same benefit and contended that petitioner invoking Article 14 of the Constitution is akin to a person who is caught during commission of theft pleading that since others who committed theft were let of, he also should be let of and relied on **STATE OF BIHAR v KAMESHWAR PRASAD SINGH** (3), where it is held that on the ground that some benefits are extended to some persons in an illegal or irregular manner, others cannot claim the same benefits, and so even if a wrong decision is taken in favour of the unaided minority educational colleges, petitioner cannot claim that benefit. With regard to the contention that the Convenor Ed-CET also deviated from methodology, his contention is that since the Convenor Ed-CET, while allotting students to various colleges, has also to take into consideration the rules or reservation for various

castes and women, there was some deviation in methodology in respect of some colleges only, but that fact cannot be taken advantage of by the petitioner. It is his contention that the managements of the colleges, who have violated the methodology, should feel happy for the Government not withdrawing the recognition for their inadherence to the prescribed methodology and since the intention of the Government in issuing the G.O. is only to curb recurrence of such incidents in future, by taking action against the erring colleges, as one time measure, petitioner cannot feel aggrieved.

7. In reply, the contention of Sri Prakash Reddy is that in the annexure to the writ petition, petitioner gave the list of all the colleges, which are its members, and even assuming that all the unaided non-minority educational colleges are not the members of the petitioner, petitioner does have a right to question the G.O. It is his contention that since Article 30 of the Constitution only enables the minority communities to establish educational institutions, but since that Article does not clothe them with a right to deviate from the instructions given by the Government, as they are also equally bound by the instructions given to the Government, to all educational institutions, Government not proposing to take action against the unaided minority educational colleges and proposing to take action only against unaided non-minority educational colleges is but discriminatory and so **KAMESHWAR PRASAD SINGH** (2 supra) relied on by the learned Government Pleader, has no application to the facts of this case. It is his contention that since a policy decision, if it violates Article 14 of the Constitution, can be subjected to judicial review, and since Government, after the petitioner filing this writ petition issued G.O.Ms.No.55, dated 20.3.2005 permitting the unaided minority institutions to fill up the seats with minority and non-minority students as per their choice, in spite of the fact that some of such colleges were cleared with a warning through Memo No.18037/Trg-1/2003-1, dated 28.11.2003 for their violating the admission norms during 2002-03, while clearing all the unaided non-minority educational colleges, Government issuing the G.O. targeting the unaided non-minority educational colleges is but discriminatory. The contention of the learned Government Pleader is that the Government modified G.O.Ms.No.55 dated 20.03.2005 by issuing G.O.Ms.No.57 dated 21.03.2005.

8. I do not find any force in the contention of the learned Government Pleader that since the petitioner did not disclose the names of the colleges, which are its members, the petition is liable to be dismissed. Even assuming that all the unaided non-minority educational colleges in the State are not the members of the petitioner association, but some only of such colleges in the State of Andhra Pradesh are its members, it makes no difference, because in the event of the G.O. being quashed, the benefit thereof would go to all the unaided non-minority educational colleges, but not merely to the petitioner and the colleges which are the members of the petitioner, because if an Act or a G.O. is quashed, being violative of Article 14 of the Constitution, it is akin to its being non est or void *ab initio* or still born. So, a G.O. or an Act, which is void *ab initio* cannot be enforced by the Government even against persons who are not parties to the petition, because a still born or a void Act or G.O. can never be enforced against anybody.

9. Even otherwise, in the Annexure to this petition, petitioner gave the names of all the colleges under Osmania University, Sri Venkateswara University, Kakatiya University, Nagarjuna University and Andhra University, which deviated from the methodology. So, it is easy to see that this petition is with regard to those institutions only. Even otherwise, as stated earlier, other colleges, which are not parties to this petition, also can have the benefit of the order to be passed in this petition, if it is favourable to them.

10. The other objection raised by the learned Government Pleader is with regard to the prayer in the writ petition. The prayer in the petition is to-

> "issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Certiorari ……"

So, it cannot be said that this petition is filed for issuance of a Writ of Certiorari. Even otherwise, I am not able to agree with the contention of the learned Government Pleader that Writ of Certiorari can be issued only against Judicial/Quasi Judicial Tribunals or authorities which are subordinate to High Court because in 'Shorter Constitution of India' by Durga Das Basu (thirteenth edition 2001), the learned

author after referring to various decisions of the apex Court observed at page 1007 as follows:

> "In the earlier cases, the Court adhered to the English view that *Certiorari* lies only against judicial and quasi-judicial proceedings and that it will not issue against an administrative order in respect of which the Court could not come to a finding that it was saddled with a quasi-judicial obligation. But as the result of a series of liberal decisions, the position now is:-
>
> **"The old distinction between a judicial act and administrative act withered away and we have been liberated from the pestilent incantation of administrative action".**

In view thereof, if an administrative action is violative of Article 14 of the Constitution, an appropriate writ, including Certiorari, can be issued.

11. Now the point for consideration is whether the G.O. is violative of Article 14 of the Constitution. The fact that the colleges mentioned in the annexure appended to the petition did not exceed the 15% quota of seats allotted to them is admitted in para-7 of the counter affidavit filed on behalf of the respondents. The deviation is only in the methodology of admission, i.e. admitting more students than permitted in some subjects, while admitting less number of students than permitted in the other subjects. The deviation in methodology, in most of the colleges is in the subject 'Social Studies'. That there is more demand for the subject Social Studies than the other subjects is evident from the fact that for the academic year 2004-05, Government increased the seats in Social Studies, while reducing the seats in other subjects, because the averments in para-9(d) of the affidavit filed in support of the petition, are not disputed or denied in the counter affidavit filed on behalf of the respondents.

12. Memo No.18036/Trg.1/2003-1 dated 28.11.2003 annexed to the petition shows that unaided minority colleges of Type-1 and 2 were cleared but Type-3 colleges were cleared with warning letters, and that all the 216 unaided non-minority colleges were cleared. So, it is clear that Government did not have any objection for the admissions made by 216 unaided non-minority educational colleges during 2002-

03. Significantly, Government, which frowned at the unaided minority educational colleges, for the deviations made by them, and cleared all the unaided non-minority educational colleges without any remark in respect of admissions for the academic year 2002-03, is penalizing only the unaided
non-minority educational colleges through the G.O. for unexplained reasons. When the petitioner cried foul, and questioned the G.O. by filing this petition, Government filed the counter affidavit of its Principal Secretary, School Education, on 22.3.2005, alleging that it is proposing to take action against the unaided minority educational colleges also. Surprisingly, that counter affidavit does not make a reference to G.O.Ms.No.55 dated 20.03.2005, under which all unaided minority colleges, including those unaided minority educational colleges which were cleared with a warning through the memo dated 28.11.2003 above referred to, were permitted to have a free hand in filling up the seats allotted to them, or about G.O.Ms.No.57 dated 21.03.2005 modifying the earlier G.O.Ms.No.55 dated 20.03.2005. That fact establishes that Government showed a stick to the unaided
non-minority colleges cleared by it, in 2002-03, but gave Carrots to the institutions warned by it for the same deviation. For reasons best known to him the Principal Secretary in his counter affidavit filed on 22.03.2005 refrained from making a reference to the G.O.Nos.55 and 57 dated 20.03.2005 and 21.03.2005, respectively. So, it is clear that merely on the basis that they are minority institutions, all unaided minority institutions are shown a favour, though they deviated from methodology earlier, but the unaided non-minority educational colleges are subjected to a penalty for the same lapse that was committed by the minority educational institutions which is a clear discrimination.

13. I am unable to agree with the contention of the learned Government Pleader that petitioner seeking quash of the G.O. is akin to a thief who is caught in the act requesting to be let of on the ground that other thieves similarly caught like him were let of. For that proposition, the learned Government Pleader tried to garner support from **KAMESHWAR PRASAD SINGH** case
(3 supra). That case is of no help to the respondents because that case relates to seniority among Officers in police service in the State of Bihar, where the apex Court held that benefit obtained by an employee or officer, on the basis of a wrong order given by a Court, cannot be claimed by the other officers by invoking Article 14 of the

Constitution. In para-30 of the said judgment at page 111 it is held

> "The concept of equality as envisaged under Article 14 of the Constitution is a positive concept, which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in ***Gurusharan Singh Vs New Delhi Municipal Committee*** held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court".

Petitioner is not asking for any benefit illegally given to the unaided minority institutions, being extended to it, nor is it asking for a negative relief. On the other hand, what petitioner is saying is that though both minority and non-minority unaided educational colleges deviated from the methodology in admissions, Government taking action only against non-minority unaided educational colleges, while letting off the minority unaided educational colleges, is discriminatory and violative of Article 14 of the Constitution. In the example given by the learned Government Pleader, if two thieves are caught during commission of theft at the same place and time, if only one of them is prosecuted and the other thief is not, the prosecuted thief can claim that he also should be let of. In my considered opinion, all the violaters of law or the orders issued by the Government have to be treated equally. The Government while letting off some known violaters of its G.O., cannot proceed only against the persons of its choice. As rightly contended by

Sri Prakash Reddy, protection given to the institutions run by the minorities is only with regard to establishment and running of educational institutions. They are not free to violate the Rules, or the methodology prescribed by the Government. When the Government wishes to take action against erring colleges, all colleges have to be treated equally and on par, whether they are minority or non-minority colleges. The question in this case is not about the 'intention' of the government, but is about the 'action' of the Government. Had the Government applied the same yardstick to both minority and non-minority unaided educational colleges, may be, petitioner cannot have a grievance. Since the G.O. does not speak anything about minority unaided educational colleges, which admittedly violated the methodology of

admissions, the same has to be held to be discriminatory because unaided non-minority educational colleges only but not the unaided minority educational colleges are targeted by it.

14. In **PARITOSH BHUPESH KUMARSHETH** case (1 supra) the apex Court was considering the validity of a Regulation in Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977. **ASIF HAMEED** case (2 supra) relates to admissions into M.B.B.S./B.D.S. courses. Question of discrimination did not arise and was not considered by the apex Court in those cases. As stated earlier had the Government not discriminated the minority and non-minority unaided educational colleges, and had taken action against both, minority and non-minority unaided educational colleges, petitioner may not have had the cause of action to question the decision, being a policy decision. Since a policy decision, if it violates Article 14 of the Constitution, can always be challenged under Article 226 of the Constitution, and since petitioner is alleging discrimination, this petition is maintainable.

15. The contention that the action taken under the G.O. is only to keep the unaided non-minority colleges under a threat so that they would not deviate from methodology, even if true, does not save the situation, because respondents failed to explain as to why they did not feel that such a threat should be administered to the unaided minority educational colleges also. Since, THEY confined the threat only to the unaided non-minority educational colleges, though they were cleared, and spared the unaided minority educational colleges which were cleared with a warning, in respect of 2002-03 admissions, it is clear that Government, while trying to put the unaided non-minority educational institutions under threat for the deviation in methodology by issuing the G.O., had in fact conferred a largesse on the unaided minority educational institutions (probably in appreciation of their courage in their continued deviation in methodology during 2003-04 admissions also) by issuing G.O.Nos.55 and 57 dated 20.03.2005 and 21.03.2005, respectively. Thus, it is clear that para-4 of the G.O. suffers from the vice of discrimination and hence is liable to be struck down as violative of Article 14 of the Constitution.

16. For the above reasons, the writ petition is allowed. Rule Nisi is made absolute and para-4 of the G.O.Ms.No.46 School Education (Trg) Department dated 23.02.2005 is struck down. No costs. Advocate is fixed at Rs.1000/-.

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(C.Y. SOMAYAJULU, J)

Date: 31.03.2005

Cvrk

Note: Office to furnish certified

copies by tomorrow.

//B.O.//

cvrk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The State of A.P., represented by the Principal Secretary to Govt, School Education Department, Secretariat Buildings, Hyderabad.
2. The Ed-Cet Convener 2003-2004/Dean College of Education, Osmania University, Hyderabad.
3. The Ed-Cet Convener 2004-2005, Regional Joint Director, School Education, Kakinada.
4. The A.P. State Council for High Education rept., by its Secretary, Saifabad, Hyderabad.
5. The Commissioner and Director of School Education, Saifabad, Hyderabad.
6. 2 ccs to the Govt. Pleader for Education, High Court of A.P,

Hyderabad.

7. 2 CD copies